



Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001  
+1 212 909 6000

October 10, 2023

**BY ECF**

The Honorable Michael A. Hammer, U.S.M.J.  
United States District Court for the District of New Jersey  
Martin Luther King Federal Bldg. & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

**Re: *Merck & Co., Inc., et al. v. Merck KGaA*, Civil Action No. 16-266(ES/MAH)**

Dear Judge Hammer:

This firm, along with Blank Rome LLP, represents Defendant Merck KGaA in the above-referenced matter. Please see the attached letter from my partner, David Bernstein, who is lead trial counsel in this case. I am filing this letter on his behalf as he is admitted *pro hac vice* and is unable to file a letter directly on ECF.

Respectfully submitted,

/s/ Megan K. Bannigan  
Megan K. Bannigan

cc (by ECF): All Counsel of Record

Encl.



**Debevoise  
& Plimpton**

**Debevoise & Plimpton LLP**  
66 Hudson Boulevard  
New York, NY 10001  
+1 212 909 6000

**David H. Bernstein**  
Partner  
dhbernstein@debevoise.com  
Tel +1 212 909 6696  
Fax +1 212 521 7696

October 10, 2023

**VIA ECF**

Honorable Michael A. Hammer  
United States Magistrate Judge  
U.S. District Court - District of New Jersey  
M.L.K. Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Re: Merck & Co. et al v. Merck KGaA, Civil Action No. 16-266 (ES) (MAH)

Dear Judge Hammer:

We write on behalf of the parties regarding the scheduling of the Final Pretrial Conference, which the Court recently reset from October 12, 2023 to November 21, 2023.

**Defendant's Position**

I write on behalf of Defendant Merck KGaA regarding the Final Pretrial Conference that the Court has re-scheduled for November 21, 2023. I respectfully request that the Conference be rescheduled because I will be away with family for the Thanksgiving holiday that week. As lead trial counsel for the Defendant, and given the importance of this Conference, I would like to appear before the Court in person for the Conference. We assume the Court is unavailable in the weeks leading up to Thanksgiving given that the Court adjourned the Conference until November 21, but in any event, we have a number of preexisting commitments requiring travel during that time. We are available on November 30, 2023 and December 4 through December 15, 2023, and Plaintiffs have indicated that they are available on any of those days. Given the complexities of this case and the length of time it has been pending, a short adjournment of the Final Pretrial Conference will not cause any prejudice.

**Plaintiffs' Position**

This case was filed in 2016 and Plaintiffs have been waiting for years to have their day in court. The pre-trial conference in this matter was already postponed once at Defendant's request, from July 6, 2023 to October 12, 2023, to accommodate Mr. Bernstein's personal schedule. Plaintiffs do not wish to delay this matter any further.

Plaintiffs respectfully submit that the pretrial conference scheduled for November 21, 2023 can be conducted via remote videoconference to accommodate Mr. Bernstein's plan to be in Colorado that day. This Court has previously conducted mediation sessions in this matter via



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videoconference. The November 21 pretrial conference could likewise be conducted via videoconference in order to permit Mr. Bernstein to participate remotely and avoid a further postponement.

Alternatively, one of Mr. Bernstein's partners, who have worked on this case for years, could handle the conference in person that day.

If the Court decides to move the conference date, Plaintiffs will make themselves available any day from November 1- 21 and November 27-December 18.

We appreciate the Court's attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David H. Bernstein', with a stylized flourish at the end.

David H. Bernstein

cc (by ECF):

All Counsel of Record